# Rural Business Law

NEWS AND ADVICE FROM BIRKETT LONG

## A new path for ramblers?

Public rights of way and public access to the working rural landscape have long caused land owners and farmers concern.

That concern has extended to the impact on the value and development of their property and to the risks that walkers, unfamiliar with the industrial environment that is modern farmland, take when they are walking.

The Ramblers Association, acting through their Suffolk Footpath Secretary, have recently secured a ruling from the Court of Appeal that may open the way for the widespread resurrection of historic rights of way which could widen this problem. The case arises from the enclosure of farmland during the agricultural revolution of the eighteenth century and turned on the interpretation of the Inclosure Consolidation Act 1801 – an obscure piece of legislation even for the legally minded! This Act was passed to provide a 'simplified' system for the enclosure of land by setting out a range of standard powers to be included in acts for the enclosure of parishes and to save Parliament time in debating each individual enclosure act.

Two hundred and fourteen years on, it appears that simplification was not entirely successful! The Court of Appeal was called upon to decide whether a footpath and bridleway laid out by the Commissioners for Crudwell in Wiltshire, appointed under the powers of the 1801 Act, were public rights of way which should be added to the Local Definitive Map. The High Court previously ruled that the 1801 Act did not confer power to lay out new footpaths and bridleways, only to recognise those that already existed. However, the Court of Appeal overturned that status quo and set a new precedent. Some estimates suggest that there may be between 500 and 1,000 Enclosure Acts for parishes in England that contain rights of way. It seems likely that, fresh from this victory, the Ramblers Association will make applications for new rights of way to be recognised as public footpaths or bridleways and added to the Local Definitive Map. If you are concerned about access rights over your property please get in touch.

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# Less inheritance tax

## Due to new taxation rules

**The Conservatives' summer budget revealed details of proposed changes to the current Inheritance Tax (IHT) threshold. But what are the changes, and what do they mean for you?**

Currently, each individual has an allowance of £325,000, known as the Nil Rate Band (NRB) which can be left on their death before any IHT is payable. Any sum above this amount is levied at 40%. For spouses or civil partners, any unused allowance from their spouse can be transferred to their own, meaning assets worth up to £650,000 can be passed on before any IHT charge is triggered.

With house prices in the south east soaring, many people are being left with a taxable estate. In some instances, the only way to settle the tax liability is to sell the family home.

From April 2017, the main residence NRB will be introduced. This will be worth £100,000 in 2017-18, £125,000 in 2018-19, £150,000 in 2019-20, and £175,000 in 2020-21. This will allow individuals to pass on assets worth up to £500,000 without paying any IHT. For spouses and civil partners, the total is £1 million. However, if the net value of the estate is above £2 million, the additional NRB will be tapered away by £1 for every £2 that the net value exceeds that amount. It is evident that these changes are not designed to assist those with vast wealth!

The caveat to the main residence NRB is that the property must be residential, and that the deceased must have resided there at some stage. It must also be left to direct descendants, classified as children (including adopted and step-children) or their lineal descendants. The value of the main residence NRB that can be used will be the lower of the net value of the interest in the property or the maximum amount of the band, meaning that any remaining NRB cannot be used on other assets within the estate. The qualifying residential interest is limited to one property, but executors can nominate which property this is attributed to. Those who downsized their property to one of less value will be eligible for an inheritance tax credit, provided that the property, or assets of equivalent value, is left to direct descendants. This is to encourage the older generation to free up larger properties and cover those who have gone into care.

Some of you will be aware that trying to obtain 100% Agriculture Property Relief (APR) on a farmhouse is virtually impossible, and HMRC applies the exemption on the 'agricultural' value of the

# Wybar's Sidebar

## Looking back on 2015

With harvest completed, it's time to reflect on the year past.

We've all watched in despair as the RPA has struggled with the transition from SPS to BPS and we have to trust that the 2015 payments will be paid in full to the right person and at the right time, whether land remains in the same occupation or was transferred ahead of the claim date. The land market seems to have softened a bit but prices remain at historically high levels and Capital Gains Tax has been a significant factor in many of the transactions in which we have been involved this year, as those selling seek to take advantage of Entrepreneurs' Relief to pay tax at the reduced rate of 10% if available.

Away from the office, our farming clients are wrestling with the reality of low commodity prices that will make budgeting a challenging process for the foreseeable future.

For advice on any legal matters, please contact a member of our team.

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property, rather than the market value. The new NRB means that in some instances the difference between the two values, which would otherwise be taxable, could be absorbed, thus potentially wiping out any tax liability.

Whilst the above is positive, there has been some controversy due to the discriminatory nature against those who do not have children. Childless couples face a £140,000 tax bill that couples with children would not have to pay (40% tax applied to £350,000). Only time will tell if the Government will take these concerns into account and change the definition of 'direct descendant'.

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# Meet the team

## Caroline Dowding

Caroline heads the firm's wills, trust and probate team in the Colchester office and specialises in work for the elderly.

Having joined Birkett Long in 2000 with no legal background, Caroline became a trainee legal executive. After completing her exams to become a Fellow of the Chartered institute of Legal Executives in 2005, she went on to take further exams to become a solicior, finally qualifying in 2012. Caroline has also recently become a member of the Agricultural Law Association.

A partner at Birkett Long, Caroline also sits on the STEP (Society of Trust and Estate Practitioners) committee Essex Branch as Student Liaison Officer and is a full professional member of Solicitors for the Elderly.

"Thank you for the exceptionally kind, efficient and patient way you clarified what, to me, were the complicated matters in hand. I would not hesitate to come back to you should the need arise."
*Client quote.*

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# in brief

## The pesky small print

A recent landmark ruling in Arnold v Britton & Ors (2015) has confirmed the old cliché – always read the small print before you sign.

This case confirmed that commercial contracts entered into freely between parties cannot be retrospectively changed to reflect commercial common sense, no matter how absurd or injurious their impact. (Cue sigh of relief!). I will come to the facts of the case in a moment and, I suspect, they will seem harsh, perhaps even unjustifiable, but first consider the context.

Freedom of contract principles have always remained sacrosanct because intelligent commercial parties are considered to have the benefit of a greater level of acumen and indeed exposure to professional advice than consumers or private individuals. Although this is not always the case, if this position was eroded, certainty would be lost from carefully constructed commercial contracts. That would leave us in a position analogous to the coach and horses driven through certainty with regard to residential property and ownership shares of co-habiting partners - as in the cases of Stack v Dowden (2007) and Jones v Kernott (2011).

The facts of the Arnold v Britton case relate to chalets in a holiday park in South Wales. Each of the 91 modest chalets is let for a period of 99 years from 1974 on very similar terms. However, there is one conspicuous difference: service charges are payable by each tenant for the landlord's maintenance of common parts, yet 66 chalets have their service charge reviewed every 3 years, while the remaining 25 have their service charge reviewed annually.

I hope I don't lose too many readers at this point, but the detail is of fundamental importance. The service charge provision is typically as follows:

"To pay the lessor without any deduction in addition to the said rent, a proportionate part of the expenses and outgoings incurred by the lessor in the repair maintenance renewal and provision of services hereinafter set out the yearly sum of ninety pounds and value added tax for [the first three years OR the first year] of the term hereby granted, increasing thereafter by ten pounds per hundred for every subsequent [three year period OR year] or part thereof."

However tedious and even difficult to ascertain the language may be, the consequence is substantially different and severe for those with annual reviews. An increase of 10% per year would put the service charge for these modest holiday chalets at over £1 million each year by the time they came to an end in 2072! This case confirmed the tenants could not escape the clutches of this clause.

Always read the small print!

For those in dispute over contractual clauses, or disputes more generally, please contact Mark Wrinch who will be happy to assist.

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